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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,163	07/11/2001	Edwin Fontecha	3737220001822	2525

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CONNELLY CUSHWA, MICHELLE R

ART UNIT	PAPER NUMBER
2874	

DATE MAILED: 09/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

<b>Application No.</b> 09/904,163  <b>Examiner</b> Michelle R. Connelly-Cushwa	<b>Applicant(s)</b> FONTECHA ET AL. <span style="float: right;">IV</span>
	<b>Art Unit</b> 2874

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 18 July 2003.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8,10,11,15,16,19,22-29,32,33 and 37-39 is/are rejected.
- 7) Claim(s) 9,12-14,17,18,20,21,30,31 and 34-36 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 January 2002 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: *(Signature)*

## DETAILED ACTION

### ***Response to Amendment***

Applicant's Amendment filed July 18, 2003 has been fully considered and entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-8, 10, 11, 15, 16, 19, 22-29, 32, 33 and 37-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Buckelew et al. (US 6,498,882 B1).**

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 1-4, 10, 19, 22-27 and 37-39; in Figures 6A-6E, Buckelew et al. discloses an optical package (100) having a length of optical fibers (110) connected to the package, comprising:

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- an enclosure having at least one optical component (102) disposed therein, the component defining a plane and being optically coupled to the length of optical fibers (110);
- an opening including a feedthrough (124) defined by at least one wall of the enclosure; and
- supports (118, 126, 127, 128) attached to the enclosure and configured to support the segment of the length (see column 9, lines 15-18 and lines 54-59);
- wherein a segment of the length of optical fibers (110) is disposed within the feedthrough (124) such that a plane defined by the segment is angled relative to the plane defined by the component (102);
- wherein the package (100) includes a mounting base, upon which the optical component (102) is mounted, the mounting base defining a plane such that the plane defined by the segment is perpendicular to the plane defined by the mounting base;
- wherein the plane defined by the segment is perpendicular to the plane defined by the component (102);
- wherein the segment of the length of optical fibers is disposed within the opening such that a non-bending length of the optical fibers exterior to the opening may be minimized; and

- wherein the length of optical fibers comprises a ribbon of optical fibers that has a cross-section selected from the group consisting of ovals, ellipses and rectangles.

Regarding claims 5-8; the supports (126, 127) disclosed in Figure 6D are clamps, wherein the support (126) has a face that includes a flat or curved surface and that is parallel to the segment of the length of optical fibers (110), wherein the support (127) has a face that includes a flat or curved surface and that is parallel to the segment of the length of optical fibers (110), wherein the support (127) comprises a compliant material, and wherein the support (127) may be a rubber silicone insert (see column 9, lines 38-59).

Regarding claims 11, 15 and 28; the feedthrough (124) includes a sealant (hermetic seal, 129) disposed within the gap defined by the opening and the length of optical fibers, wherein the hermetic seal may be metallic, thus, the feedthrough may comprise a metal (see column 9, lines 60-67).

Regarding claims 16, 29, 32 and 33; the sealant (129) may be epoxy (see column 9, lines 60-67). Epoxy is an adhesive that requires curing to adhere.

***Allowable Subject Matter***

**Claims 9, 12-14, 17, 18, 20, 21, 30, 31 and 34-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.**

The following is a statement of reasons for the indication of allowable subject matter: Claims 9, 12-14, 17, 18, 20, 21, 30, 31 and 34-36 are allowable over the prior art of record for the reasons stated in the Office action mailed May 20, 2003.

***Response to Arguments***

Applicant's arguments filed July 8, 2003 have been fully considered but they are not persuasive.

Regarding prior art rejections under 35 U.S.C. 102 (e) in view of Buckelew et al. (US 6,498,882 B1); Applicant states that the present application claims the benefit of priority to U.S. Patent Application Serial No. 09/724,829, which was filed on November 28, 2000 and that Buckelew et al. shares the same filing date as the priority filing date.

The present application, U.S. Application Serial No. 09/904,163, was filed July 11, 2001 and is a continuation-in-part of U.S. Patent Application Serial No. 09/724,829 filed November 28, 2000, which is a continuation-in-part of U.S. Patent Application Serial No. 09/654,459 filed September 1, 2000.

According to MPEP § 2133.01, when applicant files a continuation-in-part whose claims are not supported by the parent application, the effective filing date is the filing date of the child CIP.

The Examiner has reviewed both U.S. Application No. 09/724,829 and U.S. Application No. 09/654,459. Neither of these applications disclose that the plane defined by the segment of optical fibers is angled relative to the plane defined by the component, as required by both independent claims 1 and 24 of the present application. Claims 2-23 depend from claim 1 and claims 25-39 depend from claim 24. Therefore,

the subject matter of claims 1-39 of the present application, 09/904,163, have an effective filing date of July 11, 2001.

Applicant additionally states that Buckelew et al. (US 6,498,882 B1) and the present application, 09/904,163, were both commonly assigned to Lightwave Microsystems, Inc. at the time of filing.

Buckelew et al. (US 6,498,882 B1), however, meets the criteria for prior art under 35 U.S.C. 102(e) because the inventors of Buckelew et al. are different from the inventors of the present application. This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning the merits of this communication should be directed to Examiner Michelle R. Connelly-Cushwa at telephone number (703) 305-5327. The examiner can normally be reached 9:00 AM to 7:00 PM, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney B. Bovernick can be reached on 703-308-4819. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general or clerical nature should be directed to the Technology Center 2800 receptionist at telephone number (703) 308-0956.

*MRCC*  
Michelle R. Connelly-Cushwa  
Patent Examiner  
September 11, 2003

*Bruce H. Kelly*